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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

COMMISSIONERS

ROBERT "BOB" BURNS - Chairman
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON
LEA MÁRQUEZ PETERSON

OCT 22 2020

DOCKETED BY

In the matter of:

DOCKET NO. S-21113A-20-0233

RICHARD A. SMART, a single man,

DECISION NO. **77765**SMART ACQUISITIONS, LLC, an Arizona
limited liability company,SMART ENTERPRISES, LLC, an Arizona
limited liability company, andSIMPLY SMART HOMES, LLC, an
Arizona limited liability company,

**ORDER TO CEASE AND DESIST ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
ORDER FOR OTHER AFFIRMATIVE
ACTION**

Respondents.

On July 27, 2020, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Order for other Affirmative Action (the "Notice") against Respondents Richard A. Smart, Smart Acquisitions, LLC, Smart Enterprises, LLC, and Simply Smart Homes, LLC.

On July 31, 2020, the Division served a copy of the Notice, upon Respondent Richard A. Smart, by delivering to Richard A. Smart via certified mail. On July 31, 2020, the Division served copies of the Notice, upon Respondents Smart Acquisitions, LLC, Smart Enterprises, LLC, and Simply Smart Homes, LLC (the "Entities"), by the delivering to Richard A. Smart the statutory agent and manager/managing-member of the Entities, via certified mail. No request for a hearing or answer to the Notice has been filed as of September 29, 2020.

I.**FINDINGS OF FACT**

1. At all times relevant, Richard A. Smart ("R. Smart") has been a single man and a resident of Arizona. R. Smart has not been registered with the Commission as a securities salesman or dealer.

2. Smart Acquisitions, LLC ("Smart Acquisitions") is a manager-managed limited liability company that was organized under the laws of the state of Arizona in March of 2016. Smart Acquisitions has not been registered with the Commission as a securities salesman or dealer.

3. Smart Enterprises, LLC ("Smart Enterprises") is a manager-managed limited liability company that was organized under the laws of the state of Arizona in August of 2014. Smart Enterprises has not been registered with the Commission as a securities salesman or dealer.

4. Simply Smart Homes, LLC ("Simply Smart Homes") is a member-managed limited liability company that was organized under the laws of the state of Arizona in April of 2015. Simply Smart Homes has not been registered with the Commission as a securities salesman or dealer.

5. R. Smart, Smart Enterprises, and Simply Smart Homes are the managing-managers of Smart Acquisitions. R. Smart is the statutory agent for Smart Acquisitions.

6. R. Smart is the statutory agent and sole manager of Smart Enterprises.

7. R. Smart and Smart Enterprises are the managing-members of Simply Smart Homes. R. Smart is the statutory agent for Simply Smart Homes.

8. R. Smart, Smart Acquisitions, Smart Enterprises, and Simply Smart Homes may be referred to collectively as "Respondents."

A. Introduction

9. From August of 2015 through April of 2016, R. Smart and Simply Smart Homes induced four Arizona investors ("AZ Investors") to collectively invest \$110,000 in R. Smart's and Simply Smart Homes' fix and flip investment properties by making numerous misrepresentations and omissions of material facts. Shortly thereafter, R. Smart's and Simply Smart Homes' fix and flip investment properties were foreclosed on. As a result, R. Smart and Simply Smart Homes failed to pay the AZ

1 Investors the promised returns on their investments and failed to return their principal investments
2 [except for \$1250 that was paid to one investor].

3 10. On April 11, 2017, the Commission issued Decision No. 76063 against R. Smart,
4 Smart Enterprises, and Simply Smart Homes for the activity listed in paragraph 9.

5 11. On or about June of 2017, R. Smart and Smart Acquisitions induced two Arizona
6 investors to collectively invest \$45,000 in R. Smart's and Smart Acquisitions' fix and flip investment
7 property by making several misrepresentations and omissions of material facts. Shortly thereafter, R.
8 Smart's and Smart Acquisitions' fix and flip investment property was foreclosed on. As a result, R.
9 Smart and Smart Acquisitions failed to pay the investors the promised returns on their investments and
10 failed to return their principal investments.

11 12. The June 2017 fix and flip investment opportunity that was offered and sold by R.
12 Smart and Smart Acquisitions was very similar to the fix and flip investment opportunities that are
13 subject to Decision No. 76063.

14 **B. Previous Commission Action**

15 13. On January 19, 2017, the Division filed a Notice of Opportunity for Hearing (the
16 "Notice") against R. Smart, Smart Enterprises, and Simply Smart Homes ("Smart Respondents"). On
17 January 20, 2017, the Division served copies of the Notice on all the Smart Respondents, via personal
18 service.

19 14. On April 11, 2017, the Commission issued Decision No. 76063 (the "Decision"); the
20 Decision ordered the Smart Respondents to jointly and severally pay restitution in the principal
21 amount of \$108,750, and to pay a \$15,000 administrative penalty. The Decision further ordered
22 Respondents R. Smart and Simply Smart Homes, and any of R. Smart's and Simply Smart Homes'
23 agents, employees, successors and assigns, to permanently cease and desist from violating the
24 Securities Act.

25 15. According to the Decision, from August of 2015, until at least April of 2016, R. Smart
26 and Simply Smart Homes, while unregistered as securities salesmen or dealers, offered and sold

1 unregistered securities in the form of promissory notes and/or joint venture agreements within or
2 from Arizona to the AZ Investors. R. Smart and Simply Smart Homes raised approximately \$110,000
3 from the AZ Investors to fund the purchase and/or renovation of Arizona real estate.

4 16. Based on the Findings of Facts contained in the Decision, R. Smart misrepresented
5 the following to some and/or all of the AZ Investors: (1) R. Smart was a successful real estate investor
6 with a history of fixing and flipping residential properties for a profit; (2) The AZ Investors'
7 investment funds would only be used to complete the needed repairs and renovations on the property
8 or on the closing costs of the property; (3) The repairs and renovations on the property will be
9 completed within a few weeks, and will be sold for a profit within a couple of months; (4) The AZ
10 Investors would receive returns on their investments within 90 days; and (5) R. Smart had buyers
11 lined up to purchase the property as soon as the rehab of the property was completed.

12 17. Further based on the Findings of Facts contained in the Decision, R. Smart failed to
13 disclose the following to some and/or all of the AZ Investors: (1) R. Smart and Simply Smart Homes
14 stopped making payments on the mortgage loans on two relevant investment properties; (2) In
15 January of 2016, R. Smart and Simply Smart Homes defaulted on the above-mentioned mortgage
16 loans and Notices of Foreclosure were filed on both investment properties; and (4) R. Smart's had
17 no prior experience flipping a house in Arizona, and overseeing a house renovation.

18 18. According to the Decision, R. Smart and Simply Smart Homes used a portion of the AZ
19 Investors' investment funds on personal expenses such as: real estate investment classes; travel;
20 dining; and other expenses not related to AZ Investors' investments.

21 **C. Background on current action**

22 19. In or around 2015, R. Smart met a female individual ("CB") in Tucson, Arizona, and
23 subsequently the two developed a romantic relationship.

24 20. In 2016, both of CB's parents passed away. Days prior to CB's mother passing away,
25 CB's mother executed a quitclaim deed, which transferred all rights, title, and interest in CB's
26 mother's house located in Tucson, Arizona ("Avenida Property") to CB. Prior to and after CB

1 received title of the Avenida Property there was an outstanding home equity line of credit loan
2 (“HELOC Loan”) on the property with a balance due of approximately \$35,000.

3 21. According to CB, the Avenida Property was not in good condition, and needed a lot
4 of work done. However, CB was not able to obtain a loan to fund the required repairs on the property.
5 R. Smart represented to CB that he would help her out with the repairs on the Avenida Property, and
6 requested that CB convey title in the Avenida Property to R. Smart.

7 22. R. Smart represented to CB that he was going to raise investment capital from
8 investors to pay off the outstanding HELOC loan and to fund the necessary repairs and upgrades on
9 the Avenida Property. R. Smart further represented to CB that once all the repairs and upgrades were
10 done on the Avenida Property, he would sell the Avenida Property back to CB for the cost of the
11 repairs and HELOC loan payoff.

12 23. On or about December of 2016, CB executed a warranty deed, which conveyed title
13 of the Avenida Property to Smart Acquisitions. In exchange, CB received \$1.00 from R. Smart.

14 **D. Current action**

15 24. In or about 2014, R. Smart met a married couple (the “Investor(s)”), that had some
16 experience fixing and flipping properties in and around Phoenix, Arizona. R. Smart represented to
17 the Investors that he was a successful real estate professional and had significant experience buying
18 and selling real estate for a profit, including fix and flips. Over the years, R. Smart and the Investors
19 developed a friendship.

20 25. On or about June of 2017, R. Smart offered the Investors an opportunity to invest in
21 a fix and flip residential property. R. Smart represented to the Investors that he bought a home in
22 Tucson, Arizona (the Avenida Property) for \$85,000, and he was looking to raise \$45,000 in
23 investment capital to fix and flip the property for a profit. R. Smart further represented to the
24 Investors that he would only use their investment funds on the Avenida Property to do the following:
25 (1) To knock down walls; (2) Re-do the bathrooms; (3) Install new counter tops in the kitchen; (4)
26 Install new appliances; and (5) Make other repairs and upgrades.

1 26. Shortly thereafter, the Investors went to Tucson, Arizona to physically look at the
2 Avenida Property. R. Smart represented to the Investors that after the needed repairs and upgrades
3 were completed, he would have no problem selling the Avenida Property for a nice profit. R. Smart
4 further represented the following: (1) R. Smart believed that he could flip the Avenida Property for
5 \$212,000; (2) R. Smart had a buyer lined up who was interested in buying the property; (3) The
6 repairs and upgrades on the Avenida property would be completed in a couple of months; (4) The
7 Avenida Property would be sold within one hundred and twenty-days; and (5) R. Smart promised to
8 pay the Investors \$60,000 in approximately one hundred and twenty-days, if they invested \$45,000.

9 27. Based on the Investors' previous experiences fixing and flipping properties, they felt
10 that R. Smart's representations regarding the timetable to fix and flip the Avenida Property for a
11 profit were reasonable, which induced them to invest in the Avenida Property.

12 28. However, Respondents R. Smart and Smart Acquisitions failed to disclose to the
13 Investors the following: (1) Since April 11, 2017, R. Smart, Smart Enterprises, and Simply Smart
14 Homes have been subject to an Order issued by the Commission; (2) On or about May 11, 2017, R.
15 Smart, Smart Enterprises, and Simply Smart Homes were ordered to pay a judgment in the amount
16 of \$136,111.64, due to several failed investment offerings. (3) R. Smart and Simply Smart Homes
17 previously raised \$110,000 from four earlier investors to fund fix and flip investments of residential
18 properties, which were similar to the fix and flip investments in the Avenida Property, and these four
19 earlier investors have not received the promised returns on their investments and have not received
20 the promised return of their principal investments [except for \$1250 that was paid to one investor];
21 and (4) R. Smart and Simply Smart Homes had two prior fix and flip investment properties, which
22 were similar to the Avenida Property, that were both foreclosed on.

23 29. Respondents R. Smart and Smart Acquisitions further failed to disclose to the
24 Investors the following: (1) R. Smart and Simply Smart Homes had previously used a portion of
25 earlier investors' investment funds on personal expenses such as: real estate investment classes,
26 travel, dining, and other expenses not related to the earlier investors' investments in R. Smart's and

1 Simply Smart Homes' fix and flip investment properties, which were similar to the Investors'
 2 investments in the Avenida Property. (2) From at least April of 2005 through September of 2009, R.
 3 Smart had at least six judgments totaling \$7,331.01 entered against him in the state of Utah, for
 4 unpaid state income tax liens; and (3) The buyer that was interested in buying the Avenida Property
 5 was CB, who R. Smart promised to sell the Avenida Property back to for the cost of the repairs on
 6 the property and the HELOC Loan payoff.

7 **E. The Note**

8 30. On or about June 26, 2017, Respondents R. Smart and Smart Acquisitions offered and
 9 sold securities in the form of a promissory note (the "Note") within or from Arizona to the Investors,
 10 who were Arizona Residents. The Investors collectively invested \$45,000 for a promised 33.34%
 11 return on their investments within one hundred and twenty-days, and the return of their principal
 12 investments.

13 31. R. Smart as the "Managing Partner" of Smart Acquisitions executed the Note, which
 14 listed Smart Acquisitions as the "Borrower" and the Investors as the "Lenders." The Note contained
 15 the following same or similar relevant language:

- 16 • Principal loan amount is \$45,000;
- 17 • "Principal amount that is due to the lender shall be paid at a flat rate of interest of
 18 33.34% and shall be paid through the escrow of the sale of the property [Avenida
 19 Property] securing this note;"
- 20 • "Total amount due upon sale of security is **\$60,000.00**" (emphasis original);
- 21 • "This note shall become due and payable 120 days from full execution of this note by
 22 all parties (10/28/2017);"
- 23 • "After 120 days, this note accrues and additional %5 [sic] per month until paid in
 24 full;"
- 25 • "This Note shall be secured by a Deed of Trust to real property [Avenida Property];"
- 26

- Upon default, “this Note and any obligations of the Borrower to the Lender, shall become due immediately, without demand or notice;” and
- “This Note shall be construed in the accordance with the laws of the State of Arizona.”

32. Each Investor issued a personal check for \$22,500 for their investment in R. Smart’s and Smart Acquisitions’ securities offerings. Both investors gave their investment funds directly to R. Smart.

33. R. Smart deposited one Investor’s check into Smart Acquisitions’ business account held at Wells Fargo Bank, N.A. (“WF Bank”). R. Smart is the sole signatory of Smart Acquisitions business account. R. Smart deposited the other Investor’s check into Simply Smart Construction, LLC’s (“Simply Smart Construction”)¹ business account held at WF Bank. R. Smart is the sole signatory for Simply Smart Construction’s business account.

34. On or about June 27, 2017, R. Smart and Smart Acquisitions executed a deed of trust (“DOT”) in connection with the Note. R. Smart provided the Investors a copy of the DOT. However, the DOT was not recorded with the Pima County Recorder’s Office.

35. At all times relevant, the Investors’ only role in R. Smart’s and Smart Acquisitions’ securities offerings was to provide capital, and the Investors expected to receive profits from the fix and flip of the Avenida Property. The Investors were not accredited investors.

36. On October 28, 2017, the Note matured. R. Smart and Smart Acquisitions defaulted on the Note. Subsequently, over the course of numerous months the Investors on several occasions corresponded with R. Smart regarding the status of the following: the Avenida Property; the promised returns on their investments; and the return of their principal investments. At all times relevant, R. Smart represented to the Investors that things were still going well and that he was dealing with contractor delays, which was the cause of the Avenida Property not being sold.

¹ Simply Smart Construction is a member-managed limited liability company that was organized under the laws of the state of Arizona in February of 2016. R. Smart, Smart Enterprises, and Simply Smart Homes are the managing-members of Simply Smart Construction.

37. In or about January of 2019, the Investors confronted R. Smart and they told R. Smart that they believe he defrauded them. In response, R. Smart admitted that he had let the Avenida Property go into foreclosure and lost the property; however, he refused to disclose to the Investors how he used their investment funds.

38. Contrary to R. Smart's representation to the Investors that he would only use their investments funds on the fix and flip of the Avenida Property, Respondents R. Smart and Smart Acquisitions used a significant portion of the Investors' investment funds on personal expenses such as: restaurants; phone bills; shopping; credit card payments; cash withdrawals; hotel rentals; and other expenses not related to the Investors' investments in the Avenida Property.

39. The Investors collectively invested \$45,000 and have not received any returns on their investments and have not received the return of their principal investments. The principal amount owed to the Investors is \$45,000.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondents R. Smart and Smart Acquisitions offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(16), 44-1801(22), and 44-1801(27).

3. Respondents R. Smart and Smart Acquisitions violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. Respondents R. Smart and Smart Acquisitions violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. Respondents R. Smart and Smart Acquisitions violated A.R.S. § 44-1991 by (a) employing a device, scheme, or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, or (c) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit.

1 6. Respondents R. Smart, Smart Enterprises, and Simply Smart Homes have directly or
2 indirectly controlled Smart Acquisitions within the meaning of A.R.S. § 44-1999. Therefore, R.
3 Smart, Smart Enterprises, and Simply Smart Homes are jointly and severally liable to the same extent
4 as Smart Acquisitions for its violations of A.R.S. § 44-1991.

5 7. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
6 2032.

7 8. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
8 2032.

9 9. Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

10 **III.**

11 **ORDER**

12 THEREFORE, on the basis of the Findings of Fact, and Conclusions of Law, the Commission
13 finds that the following relief is appropriate, in the public interest, and necessary for the protection
14 of investors:

15 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, and any of Respondents'
16 agents, employees, successors and assigns, permanently cease and desist from violating the
17 Securities Act.

18 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent R. Smart shall,
19 jointly and severally with Respondents Smart Acquisitions, Smart Enterprises, and Simply Smart
20 Homes, pay restitution to the Commission in the principal amount of \$45,000 as a result of the
21 conduct set forth in the Findings of Fact and Conclusions of Law. Payment is due in full on the date
22 of this Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing
23 account controlled by the Commission. Respondents shall pay ten percent per annum on all purchases
24 from the date of purchase until the date of this Order, subject to any legal offsets, pursuant to A.A.C.
25 R14-4-308(C).

1 IT IS FURTHER ORDERED that the restitution ordered in the preceding paragraph will
2 accrue interest, as of the date of the Order, at the rate of the lesser of (i) ten percent per annum or (ii)
3 at a rate per annum that is equal to one per cent plus the prime rate as published by the board of
4 governors of the federal reserve system in statistical release H. 15 or any publication that may
5 supersede it on the date that the judgment is entered.

6 The Commission shall disburse the funds on a pro-rata basis to investors shown on the records
7 of the Commission. Any restitution funds that the Commission cannot disburse because an investor
8 refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor
9 because the investor is deceased shall be disbursed on a pro-rata basis to the remaining investors
10 shown on the records of the Commission. Any funds that the Commission determines it is unable to
11 or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

12 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent R. Smart shall,
13 jointly and severally with Respondents Smart Acquisitions, Smart Enterprises, and Simply Smart
14 Homes, pay an administrative penalty in the amount of \$15,000 as a result of the conduct set forth
15 in the Findings of Fact and Conclusions of Law. Payment is due in full on the date of this Order.
16 Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest as
17 allowed by law.

18 IT IS FURTHER ORDERED that the administrative penalty ordered in the preceding
19 paragraph will accrue interest at the rate of the lesser of (i) ten percent per annum or (ii) at a rate per
20 annum that is equal to one per cent plus the prime rate as published by the board of governors of the
21 federal reserve system in statistical release H. 15 or any publication that may supersede it on the date
22 that the judgment is entered.

23 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
24 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
25 shall be applied to the penalty obligation.
26

IT IS FURTHER ORDERED, that if Respondents fail to comply with this order, the Commission may bring further legal proceedings against Respondents, including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION


CHAIRMAN BURNS


COMMISSIONER DUNN


COMMISSIONER KENNEDY


COMMISSIONER OLSON


COMMISSIONER MÁRQUEZ PETERSON



IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 22 day of October, 2020.


MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov.

(MS)

1 SERVICE LIST FOR: *Richard A. Smart et al.*

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9 *Respondent*

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